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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/121,368	07/23/1998	BRADLEY C. LINDEN	S13.12-0036	3233

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KENYON & KENYON LLP  
1500 K STREET N.W.  
SUITE 700  
WASHINGTON, DC 20005

EXAMINER
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KOHARSKI, CHRISTOPHER

ART UNIT	PAPER NUMBER
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3763

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11/20/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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CENTRAL REEXAMINATION UNIT

In re Application of  
Bradley C. Linden et al.  
Application No. 09/121,368  
Filed: July 23, 1998  
Practitioner Docket No.: S13.12-0036

: DECISION  
: TERMINATING  
: REISSUE PROCEEDING  
:  
:

This is a decision terminating the instant reissue proceeding by default based on (1) the expiration of U.S. patent 5,538,504, for which patent the present application requests reissue, and (2) the failure of applicant to respond to the Show Cause Order mailed by the Office October 1, 2008.

### BACKGROUND

1. The present application was filed on July 23, 1998, for reissue of U.S. patent 5,538,504 ("the '504 patent") issued July 23, 1996.
2. The present application for reissue of the '504 patent is shown as pending; the Image File Wrapper record shows that prosecution of the application has not been closed.
3. The Office's financial records reveal that the 11.5 year maintenance fee due by July 23, 2008 (the end of the maintenance fee grace period), was not paid. As a result, the '504 patent expired at midnight on July 23, 2008, for failure to pay the 11.5 year maintenance fee due.<sup>1</sup>
4. The expiration of the '504 patent for failure to pay the 11.5 year maintenance fee has been published in the *Official Gazette*.<sup>2</sup>
5. On October 1, 2008, a Show Cause Order was mailed to applicant, setting a 30-day period for a response showing sufficient cause why the Office should not terminate the present reissue proceeding. The Order makes clear that a failure by applicant to respond to the show cause order within the set 30-day period will result in the termination of the proceeding by default.

<sup>1</sup> See the last paragraph of MPEP 2506.

<sup>2</sup> See 1334 OG 80 (September 9, 2008), available at <http://www.uspto.gov/web/patents/patog/>. See also 1334 TMOG 80 (September 9, 2008).

6. No response to the October 1, 2008 Show Cause Order has been received by the Office.

### DECISION

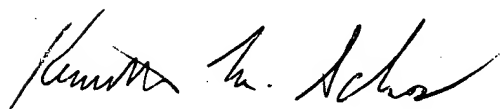
As pointed out above, no response to the October 1, 2008 Show Cause Order has been received by the Office. In addition, there is no record of a petition addressing the failure to pay the 11.5 year maintenance fee, as required.

Since the '504 patent expired for failure to pay the requisite maintenance fee, and applicant has not provided any information to the contrary after being afforded an opportunity to do so, the instant reissue application is hereby terminated, given that the Director of the USPTO no longer has the authority under 35 U.S.C. 251 to reissue the '504 patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993).

Because the reissue application is terminated, the Technology Center will, upon receipt of jurisdiction over the reissue proceeding, proceed to hold the reissue application to be an abandoned application, and process the application accordingly.

### CONCLUSION

1. The present reissue application is hereby terminated.
2. Jurisdiction over the reissue application file is being forwarded to Technology Center Art Unit 3763 for processing as an abandoned application.
3. Telephone inquiries related to this decision should be directed to Raul Tamayo, Legal Advisor, at (571) 272-7728.



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Kenneth M. Schor  
Senior Legal Advisor  
Office of Patent Legal Administration